IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1969.

No. 661

HELLENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC.,
Petitioners,

vs.

ZACHARIAS RHODITIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit.

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To the United States Court of Appeals for the Fifth Circuit.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, Hellenic Lines Limited and Universal Cargo Carriers, Inc., pray that a Writ of Certiorari be issued to review the Decision and Judgment of the United States Court of Appeals for the Fifth Circuit Court of Appeals in this cause, and specifically its opinion, unreported at this time, but which is annexed to this petition as Appendix A (App. p. A-1); and to the combined order denying Rehearing and Rehearing En Banc, annexed as Appendix B (App. p. A-14).

JURISDICTION.

The jurisdiction of this Honorable Court is invoked pursuant to the provisions of Title 28, United States Code, Section 1254 (1).

The judgment of the Court of Appeals affirming the District Court was entered on May 8, 1969.

The combined order denying Rehearing and denying Rehearing En Banc was entered on July 3, 1969.

QUESTIONS FOR REVIEW.

I.

Were the lower courts correct in applying the Jones Act to an action by a Greek seaman, himself a resident of Greece, against a Greek corporate owner for injury occurring aboard a Greek flag vessel, solely on the ground that the majority stockholder of the corporate shipowner, although himself a Greek citizen, resided in the United States as a representative of Greece to the United Nations?

II.

Were the lower courts correct in finding that the Greek flag of the HELLENIC HERO was a "Flag of Convenience" when the corporation was formed in Greece, by Greek citizens, in 1934, has continued to exist with home offices in Greece since that time; when all stockholders are Greek citizens; when two of its four trade routes do not touch the United States; when all of its crewing takes place in Greece and only Greek seamen are employed and when most of its vessels call in Greece where they are supplied and repaired?

III.

Were the courts correct after making a determination that the Greek seaman (Plaintiff below) had a forum accessible to him in Greece to then add a second complete remedy under the Jones Act?

STATUTES INVOLVED.

The principal statute involved in this case is the Jones Act (41 Stat. 1007, 46 United States Code 688), which is set forth as follows:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

STATEMENT OF THE CASE.

Respondent (libelant below) was born in Greece, is a Greek national, at all pertinent times resided in Greece, and signed on the SS HELLENIC HERO in Heraclion (Iraklion) Greece for a voyage commencing in Greece and ending in Greece. The contract of employment is in the form prescribed by the government of Greece fol-

lowing negotiations with Greek unions and ratification by Greek shipowners. The employment of all Greek seamen by Greek vessels is pursuant to this same collective agreement between the unions and the shipowners.

Hellenic Lines Limited is and was the operator of the HELLENIC HERO at all pertinent times, and was the employer of Rhoditis. Title to the HELLENIC HERO is in Universal Cargo Carriers, Inc., a wholly owned Panamanian subsidiary of Hellenic Lines Limited.

Hellenic Lines Limited is a pre-World War II company organized in Greece in 1934 and has continued to own and operate vessels in several trades since that time. Some of its trade routes are to and from certain American ports; some do not touch American ports. All of its stockholders are Greek citizens including its majority stockholder, Pericles Callimanopulos.

The HELLENIC HERO is, and always has been, duly registered as a Greek flag vessel and operated as such. She and her sister ships call regularly at Greek ports and employ Greek seamen only.

Respondent Rhoditis was injured aboard the HELLENIC HERO in the Port of New Orleans on August 3, 1965. He was initially treated for a period of less than two weeks in New Orleans and was returned to his home in Greece at the expense of owners. The remainder of his treatment and recuperation period took place in Greece. At the time of trial he was in Greece or sailing from Greek ports. Hellenic Lines Limited is domiciled in Greece, has a large office in Piraeus, Greece, is subject to the laws of Greece and stands ready to respond to the provisions of Greek law to the benefit of Rhoditis. As a matter of fact it has already partially responded in that all medical expenses have been paid by petitioner in Greece and a portion of the other benefits accruing under

Greek law have been paid by Hellenic Lines Limited and accepted by Rhoditis.

Pericles Callimanopulos is the majority stockholder of Hellenic Lines Limited; owning in his own name or beneficially through his son more than 95% of the stock of this corporation. Mr. Callimanopulos is a Greek national who was the organizer of Hellenic Lines in 1934. He has resided in the United States since 1945 as a resident alien; treaty trader; and, since 1963, as a representative of Greece to the United Nations. Respondent (libelant) below did not plead, nor seek to prove provisions of the Greek law covering an injury under the circumstances of this case. The shipowner (respondent below) filed a motion to dismiss in the District Court based upon the express ground that American law, including the Jones Act, did not apply to this situation and, libelant not having pleaded Greek law, there was no area of operation for the court. The motion was denied by the District Court and subsequently the District Court expressly ruled that the Jones Act was applicable to the circumstances of this case.

Issue was joined including a defense that raised the same question as had been raised on the motion to dismiss, i. e., that American law did not apply and libelant had not plead the provisions of the Greek law. The District Court entered a judgment for the libelant which was affirmed on appeal.

BASIS FOR FEDERAL JURISDICTION IN COURT OF FIRST INSTANCE.

This, of course, is the issue brought to this Honorable Court for review. Libelant (Respondent) contends that jurisdiction is founded under the Jones Act. Petitioner denies that any law of the United States was applicable to confer jurisdiction and that jurisdiction did not, in fact, exist.

ARGUMENT FOR GRANTING CERTIORARI.

I.

The Decision Below, Expressly and as a Matter of Law, Is in Conflict With That of the Court of Appeals for the Second Circuit in TSAKONITES v. TRANSPACIFIC CARRIERS CORPORATION, **368 F. 2d 426, cert. denied 386 U. S. 1007, 87 S. Ct. 1348, 18 L. Ed. 2d 434.**

The Court of Appeals for the Fifth Circuit in its decision which forms the basis for this petition expressly recognized that the Court of Appeals for the Second Circuit had already entered a contrary decision on identical facts. In the reported opinion of the instant case (App. A. p. A-11) the Court sets out its deliberate rejection of the Second Circuit's decision in these words:

> "We recognize that the Second Circuit has reached a contrary result on identical facts (the defendants there were, as here, corporations dominated by Pericles Callimanopulos and the plaintiff was a Greek seaman injured in a United States port). **Tsakonites v. Transpacific Carriers Corp.**, 2 Cir. 1966, 368 F. 2d 426, cert. denied 386 U. S. 1007, 87 S. Ct. 1348, 18 L. Ed. 2d 434."

The Court then proceeds to reject an effort to distinguish **Tsakonites** on what it described as a "tenuous ground" and enters its self-described conflicting decision:

> "Casting such finite distinctions aside, we find we cannot accept the reasoning and conclusion of the **Tsakonites** majority."

Even had the Fifth Circuit, in this case, failed to characterize its decision as in conflict with the Second Circuit **Tsakonites** decision, there can be no doubt that it was, as

a matter of law. Both cases involved a Greek seaman signed on a bona fide Greek flag vessel operated by Hellenic Lines Limited in each instance and owned by a wholly owned subsidiary of Hellenic Lines Limited. In each case the seaman was a resident of Greece and was injured in a United States port. The status of the majority stockholder (Callimanopulos) was as a resident alien in the **Tsakonites** case whereas he has diplomatic status in the instant case. The questions of law were identical in that the seaman relied on the Jones Act and American Maritime law in each case and declined to plead or prove the Greek law. In both cases the defense was the same, i. e., the inapplicability of American law and failure to plead the law of Greece gave the District Court no area of operation, hence there was no jurisdiction of the subject matter.

The only difference in the **Tsakonites** case and **Rhoditis** was the result; the two circuits reaching conflicting conclusions. Hence, with respect, the writ prayed for here should issue to resolve the conflict.

The opinion in the **Tsakonites** case is annexed hereto as Appendix C.

II.

The Decision Below Is in Conflict with the Decision of This Court in LAURITZEN v. LARSEN, **345 U. S. 571 and With** McCULLOCH v. SOCIEDAD NACIONALE DE MARINEROS DE BRAZIL, **372 U. S. 10.**

The starting point for the resolution of all controversies involving application of American law to an action between foreign citizens for injury aboard ship is **Lauritzen v. Larsen**, 345 U. S. 571, 73 S. Ct. 921, 97 L. Ed. 1254 (1953). In that case Your Honors placed reliance in three dominant elements used to determine what law

should be applied to such a situation. These were (1) the law of the flag; (2) the allegiance or domicile of the injured person; and (3) the allegiance of the defendant shipowner. Four other elements were considered in the Lauritzen case and accorded secondary importance. These were (a) Place of the Wrongful Act; (b) Place of Contract; (c) Inaccessibility of Foreign Forum; and (d) Law of the Forum.

Of all the elements set out by this Honorable Court in **Lauritzen**, both major and minor, the "law of the flag" was recognized as of paramount importance. There has been no indication of any departure from this "venerable and universal rule". Indeed, its value as the chief measuring stick was reaffirmed in **McCulloch v. Sociedad Nactional de Marineros de Brazil**, 372 U. S. 10, decided in 1963.

There have been instances, to be sure, when the "law of the flag" as the prime determinant has been overridden. This has occurred in two major categories; (1) when the injured seaman, although a foreign citizen, was a resident of the United States; and (2) in the so-called "flag of convenience" cases wherein the foreign flag was used to cover American **citizens** who were the real owners and operators of the vessel.

When the Court of Appeals for the Fifth Circuit in the instant case made use of the diplomatic residence of a Greek majority stockholder to override the "law of the flag" it was in conflict with the **Lauritzen** and **McCulloch** decisions. It erroneously concluded that the "ownership" of the HELLENIC HERO was "essentially American" despite the total absence of any American citizen, either corporate or individual, from any aspect of the matter. It cannot thus make of this case a valid "flag of convenience" exception to the paramount rule. Neither can it bring the case into the possible controlling effect of the

residence of the alien seaman in the United States; since Rhoditis was admittedly a resident of Greece. Instead it seeks to expand the third major element enunciated by this Court in **Lauritzen** (that of "allegiance of the shipowner") to include a foreign owner whose majority stockholder has diplomatic residence in the United States, although himself a citizen of Greece.

Indeed, the Court below asserts that the "seven talismen" of **Lauritzen** are "neither exclusive nor immutable" (App. A. p. A-6). It then seeks, in effect, to add an eighth element ("base of operations") to the tests enunciated by **Lauritzen** on the basis of a District Court opinion in the Second Circuit, **Pavlou v. Ocean Traders Marine Corp.**, S. D. N. Y. 1962, 211 F. Supp. 370, 325 (App. A. p. A-6). This is the same District Court which subsequently entered the **Tsakonites** decision, which, in turn, was affirmed on appeal.

With respect, such an extension and revision of the settled law as determined by this Honorable Court in **Lauritzen** and reaffirmed in **McCulloch** is contrary to those decisions and should be reviewed.

III.

This Decision Determines a Matter of Substantial Importance Relating to the Application of the Jones Act to an Area Beyond Its Purview. In So Doing It Extends the Benefits of American Law to Foreign Seamen on Foreign Flag Vessels as a Cumulative Remedy to That Provided by the Nation of the Ship's Flag.

Once again a litigant has sought to extend the benefits of the Jones Act to "any seaman" regardless of nationality or residence of the seaman or the citizenship of the shipowner. In making application of the Jones Act to the relationship between the foreign nationals here, the Court of Appeals extends the effect of the act beyond its pur-

view as determined in **Lauritzen** and in **Romero v. International Terminal Operating Co.**, 358 U. S. 354, 79 S. Ct. 468, 3 L. Ed. 2d 368 (1959). In the **Lauritzen** opinion the court points out that by long established usage statutes dealing with maritime matters, such as the Jones Act, "have been construed to apply only to areas and transactions in which the American law would be considered operative under prevalent doctrines of international law."

By long adopted principles the Jones Act has been held applicable to disputes between seaman and employer (1) when both are American; (2) when the employer is an American citizen or corporation, even though the seaman is a national of another country, **Bartholomew v. Universe Tankships**, 263 F. 2d 437; **Pavlou v. Ocean Traders, etc.**, 211 F. Supp. 320; **Southern Cross S. S. Co. v. Firipis**, 285 F. 2d 651; **Voyiatzis v. National Shipping and Trading Corp.**, 199 F. Supp. 920; and **Zielenski v. Empresa Hondurene de Vapores**, 113 F. Supp. 93; and (3) when the seaman is an American resident, regardless of citizenship, **Uravic v. F. Jarka Co.**, 282 U. S. 234; **The Gambera v. Bergoty**, 132 F. 2d 414.

The Fifth Circuit Court of Appeals now seeks to add a fourth category to include a foreign seaman against an owner whose majority stockholder, although a foreign national himself, resides in the United States even though his residence is a diplomatic one.

The Court of Appeals found that "there is uncontradicted testimony in the record to the effect that Zacharias (Rhoditis) could obtain relief through the Greek courts if he sought it. Upon this record, therefore, we cannot say that the Appellee lacks access to a foreign forum" (App. A. p. A-6). The testimony was equally uncontradicted that the Greek remedy is in the general form of compensation regardless of fault with punitive damages available in the event fault be found.

Thus, the Greek seaman is placed in the enviable position of having added to the sure compensation of his homeland, the more lucrative rewards of the Jones Act, should there be negligence, or of the general maritime law of the United States, should the vessel be seaworthy. The Court thus extends the purview of the Jones Act beyond its original and long established purpose in order to grant a second remedy to a foreign seaman, a benefit not enjoyed by the American seaman for whose benefit the statute was enacted.

This extension of the effect of the Jones Act is a matter of substantial importance and calls for review by this Honorable Court.

IV.

This Decision Usurps the Function and Authority of the Nation of the Vessel's Flag and Interposes the Laws of the United States in a Matter Wholly Between Greek Nationals.

It has long been established in the laws of nations that a sovereign should not seek to interpose its own laws between nationals of another flag unless the peace, tranquility or dignity of the interposing sovereign dictates or unless some "heavy counterweight appears". This accepted principle of international law was reiterated by this Honorable Court in Lauritzen when Your Honors quoted with approval from the earlier cases of **U. S. v. Flores**, 289 U. S. 134, 158 and **Cunard Steamship Co. v. Mellon**, 262 U. S. 100, 123:

> " 'and so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done onboard which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or

the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the law of that nation or the interests of its commerce should require. . . .' This is but a repetition of settled American doctrine."

"These considerations are of such weight in favor of Danish and against American law in this case that it must prevail unless some heavy counterweight appears."

In the **Lauritzen** case this Court goes further in this same vein to make clear that frequent commerce and contacts with United States ports are not sufficient to justify the United States in usurping the authority of the nation of the vessel's flag and the interposition of American law between foreign nationals:

"Respondent places great stress upon the assertion that petitioner's commerce and contacts with the ports of the United States are frequent and regular, as the basis for applying our statutes to incidents aboard ship.

"But the virtue and utility of seaborne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea. Hence, courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality."

The undisputed testimony in the instance case discloses that the majority stockholder resides in the United States and is a representative of Greece to the United Nations.

To make use of such diplomatic residence to oust the Greek law, which undeniably controls the relationship between the parties to this suit, and to interject the laws of the United States is a usurpation, without justification, of the function and authority of a sister nation. With respect, such a result calls for review of this matter by Your Honors.

CONCLUSION.

The decision of the Fifth Circuit of which the petitioners seek a review is in direct conflict with the Second Circuit. Further, the decision is contrary to the guides established by this Honorable Court, in **Lauritzen v. Larsen,** supra, for determining the application of law to disputes between foreign nationals. It has the further, and undesirable, effect of extending the reach of the Jones Act beyond that intended and results in the supplanting of the law of another nation by the laws of the United States in a matter which should be the sole concern of the sister nation.

For these reasons, petitioners respectfully pray that this writ be granted and the decision reviewed.

Respectfully submitted,

HELLENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC.,
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APPENDIX A.

In the
United States Court of Appeals
For the Fifth Circuit.

No. 25699.

Hellenic Lines Limited and Universal Cargo Carriers, Inc.,
Appellants,

versus

Zacharias Rhoditis,
Appellee.

Appeal from the United States District Court for the Southern District of Alabama.

(May 8, 1969.)

Before Goldberg and Ainsworth, Circuit Judges, and Spears, District Judge.

Goldberg, Circuit Judge: Sixteen years after *Lauritzen v. Larsen*[1] we must fish in somewhat turgid waters for its spawn in order to determine the applicability of the

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[1] 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953).

Jones Act.[2] The question presented is whether or not the Jones Act applies so as to allow recovery to a Greek seaman who was injured in a United States port on a Greek-flag vessel owned and controlled by United States domiciliaries. We hold that the Jones Act applies and affirm the judgment of the district court.[3]

Zacharias Rhoditis, an illiterate Greek seaman, was injured aboard the S.S. HELLENIC HERO while the ship was docking at the Port of New Orleans. Seeking compensation for his injury, Zacharias brought suit under the Jones Act against the appellants, Universal Cargo Carriers, Inc., and Hellenic Lines, Ltd.[4]

The HELLENIC HERO, which flies the Greek ensign and is registered in the port of Piraeus, Greece, has multi-nation ties, but its ownership is essentially American. Technically, the ship is owned by a Panamanian corporation which in turn is owned by a Greek corpora-

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[2] 46 U.S.C.A. § 688 (1958), the Jones Act, provides as follows:

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the commonlaw right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. . . ."

[3] The district court's opinion is reported at 273 F. Supp. 248.

[4] This suit originated as a libel under the general admiralty laws of the United States, *in rem* against the HELLENIC HERO and *in personam* against Universal Cargo Carriers and Hellenic Lines. After discovering that the appellants had substantial United States ties, Zacharias successfully moved to have the Jones Act applied. The suit under the Jones Act "is in personam against the ship's owner and not in rem against the ship itself." *Lauritzen v. Larsen*, *supra*, 345 U.S. at 574, 97 L.Ed. at 1263.

tion. However, ninety-five per cent of the stock of the Greek corporation is owned by two residents of the United States, and the corporation has its principal office in New York. Universal Cargo Carriers, the Panamanian corporation, is solely a holding company with no operational responsibilities in connection with the HERO. The real ownership and operational responsibilities are vested in Hellenic Lines, a corporation organized and existing under the laws of Greece. Hellenic is managed from a base in New York,[5] and is owned almost entirely by Pericles Callimanopoulos and his son.

Pericles, although a Greek citizen, has resided in the United States since 1945. With a home in Greenwich, Connecticut, and an office in New York City, Pericles performed his duties as managing director of the corporation from the United States. Under Pericles' direction, the HERO engaged in regularly scheduled runs between various gulf ports of the United States and ports in the Middle East. The entire income of the HERO was from cargo either originating or terminating in United States ports.

Zacharias signed on the HERO in Heraclion, Greece. His contract of employment provides that Greek law and the Greek Collective Bargaining Agreement shall apply as between the employer and the crew, and that all claims arising out of the contract of employment shall be adjudicated exclusively by the Greek courts.

In the court below Universal and Hellenic directed their defense so that it was primarily a challenge to the court's jurisdiction over the subject matter. The district court held that it had jurisdiction and explained its result as follows:

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[5] The record reflects that the New York office of Hellenic Lines has seventy-five employees. Another corporate office, which is located in New Orleans, employs fifteen.

> "Following the law announced in Lauritzen vs. Larsen, 345 U.S. 571, it would seem to us that the contacts in this case with this country are quite substantial. The Libelant was injured in the Port of New Orleans, Louisiana, aboard a vessel regularly engaged in a scheduled trade to and from the United States Gulf ports; the vessel and its controlling corporations are owned by a resident of the United States, having enjoyed his residence in this country in excess of twenty (20) years, and the operation was clearly managed, controlled and operated from this country. Under these facts, I hold that this Court has jurisdiction and that the Jones Act is applicable [cases cited]." 273 F.Supp. at 249-50.

The court then found that Zacharias' injury was the proximate result of the appellants' negligence and awarded damages in the amount of $6,000.

The sole issue raised by this appeal is whether the facts at bar warrant the application of the Jones Act, which is the basis of the district court's assertion of jurisdiction. Both parties rely on the primogenial case of *Lauritzen v. Larsen,* 1953, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254, for what it says and for what it does not say. In *Lauritzen* the question was whether one Larsen, a Danish seaman negligently injured on board a ship of the Danish flag in Havana harbor, had a cause of action under the Jones Act. Larsen, while temporarily in New York, had joined the crew of this ship owned by a Danish citizen. He had signed ship's articles providing that the rights of crew members would be governed by Danish law and by the employer's contract with the Danish Seamen's Union. In holding that the Jones Act did not apply, the Supreme Court listed seven factors to be considered in answering the question of applicability: (1) the place of the wrongful act; (2) the law of the flag; (3) the allegiance or domicile of the injured seaman; (4) allegiance of the defendant shipowner; (5) the place where the con-

tract of employment was made; (6) the inaccessibility of a foreign forum; and (7) the law of the forum.

If we were to weigh the seven immortal pillars of *Lauritzen* by merely counting contacts, the score would be three for Jones Act coverage, four against.[6] The

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[6] The factors here pointing to Jones Act applicability are: (1) the seaman was injured in a United States port; (2) the defendant shipowner is a United States domiciliary and operates his shipping business from this country; and (3) the forum is a United States court. The contacts pointing the other way are: (1) the ship's flag is Greek; (2) the injured seaman is Greek; (3) the seaman's contract of employment was made in Greece; and (4) there is a foreign forum available to the injured seaman.

Zacharias, however, contends that the count should be the other way; four to three in favor of coverage. He argues that there is no foreign forum accessible to him because a Greek court could not exercise jurisdiction of his suit, notwithstanding the appellants' willingness to submit to Greek jurisdiction. In support of this contention the appellee cites *Bikos v. Miralago Compania Armadora,* S.A., a 1962 case in which the Athens Court of Appeals refused to exercise jurisdiction in a case similar to the one *sub judice.* According to the appellee's brief, the *Bikos* case involved a tort claim by a Greek citizen against a Panamanian corporation which owned the Greek flag vessel on which the Greek plaintiff was injured. In holding that it was without jurisdiction over the controversy, the Athens court said:

> "Foreigners come indeed under the jurisdiction of this country's courts, according to Article 126 of the Introductory Law to the Civil Code; they can sue or be sued in accordance with provisions in effect relating to jurisdiction, if such jurisdiction is among the general and specific jurisdictions mentioned in the Civil Procedure. But such jurisdiction of the Piraeus Court of First Instance or other domestic court or judge does not apply to the appellee foreign corporation, since * * * appellant's services to it, during the rendering of which he was injured, were rendered abroad."

In the court below the appellee did not introduce the *Bikos* opinion into evidence and made no effort to prove that it represented the law of Greece. Since it was not proved as a fact, we cannot take judicial notice of its holding. *Rowan v. Commissioner,* 5 Cir. 1941, 120 F.2d 515, 516; *In re Mylonas,* N.D. Ala. 1960, 187 F.Supp. 716, 721; 5 *Moore's Federal Practice* §43.09 (1968); 9 *Wigmore on Evidence* § 2573 (1940). In *Black Diamond S.S. Corp. v. Stewart & Sons,* 1949, 336 U.S. 386, 397-98, 69 S.Ct. 622, 93 L.Ed. 754, 764, the Supreme Court instructs us:

> "Since Belgian law may be enforceable by our courts, that law, having been pleaded, must be established. It is true that

immortal seven, however, are not to be so mechanistically applied. *Lauritzen* did not create a contact counting test.

Rather the Supreme Court intended the applicability question to be answered by "ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved," and "from weighing of the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority." 345 U.S. at 582, 97 L.Ed. at 1267. "Hence it must be said that in a particular case something between minimal and preponderant contacts is necessary if the Jones Act is to be applied. . . . [T]he test is that 'substantial' contacts are necessary. And while . . . one contact such as the fact that the vessel flies the American flag may alone be sufficient, this is no more than to say that in such a case the contact is so obviously substantial as to render unnecessay a further probing into the facts." *Bartholomew v. Universe Tankships, Inc.*, 2 Cir. 1959, 263 F.2d 437, 439, *cert. denied*, 359 U.S. 1000, 79 S.Ct. 1138, 3 L.Ed.2d 1030. Likewise, the seven talismen are neither exclusive nor immutable.[7]

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this Court has on several occasions held international rules which had passed into the 'general maritime law' to be subject to judicial notice [cases cited]. But where less widely recognized rules of foreign maritime law have been involved, the Court has adhered to the general principle that foreign law is to be proved as a fact [cases cited]."

Moreover, there is uncontradicted testimony in the record to the effect that Zacharias could obtain relief through the Greek courts if he sought it. Upon this record, therefore, we cannot say that the appellee lacks access to a foreign forum.

[7] In *Pavlou v. Ocean Traders Marine Corp.*, S.D. N.Y. 1962, 211 F.Supp. 320, 325, the court found an eighth contact worthy of consideration—the shipowner's base of operations:

"This court recognizes that the factor of base of operations was not emphasized by the Supreme Court in Lauritzen v. Larsen, 348 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953). However, the court does not interpret that decision as an at-

The Supreme Court clearly indicated that the immortal seven were not to be given equal weight and that their significance might vary from case to case. The Supreme Court ascribed little significance to the place of contract, to the inaccessibility of a foreign forum, and to the law of the forum. We shall do likewise. Moreover, in this case we find the domicile of the injured seaman to be unimportant. The factor said to be of "cardinal importance" is the law of the flag. "[T]he weight given to the ensign overbears most other connecting events in determining applicable law," and "it must prevail *unless some heavy counterweight appears.*" [emphasis added]. 345 U.S. at 584-86, 97 L.Ed. at 1269. In this case we find that heavy counterweight: the HELLENIC HERO was for all commercial purposes owned and operated by a United States domiciliary.[8]

The HERO's flag is more symbolic than real as is evidenced by the fact that its operation and ownership ties are American, not Greek. Under these circumstances it

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tempt by the Supreme Court to exhaust the factors which may be relevant. It is clear that there the court was only dealing with the circumstances which were present therein. Indeed, in the Bartholomew case, supra, at page 443 of 263 F.2d, the Court of Appeals of this Circuit interpreted the Lauritzen decision in this way. Further, persuasive authority exists to support the view that the base of operations of the persons directing the operations of the vessel is a factor making the Jones Act applicable."

We agree with *Pavlon* that courts should consider the location of the shipowner's base of operation in conjunction with the seven factors articulated in *Lauritzen*. Since New York was the principal office of Hellenic Lines, this factor points persuasively toward Jones Act applicability.

[8] Since he has resided in the United States and maintains both his home and principal place of business here, Pericles is properly categorized as a domiciliary of this country. See *Mitchell v. United States*, 1875, 88 U.S. (21 Wall.) 310, 22 L.Ed. 584, 586. See also 28 C.J.S. §11(f) ("A change of domicile to another country does not involve or require a change of nationality or an intent to cast off all allegiance to the country of the former domicile.")

is fair to say that the HERO's flag is not due the same weight which *Lauritzen* gave to a more sturdy flag. Courts need not elevate symbols over reality. We therefore pierce the corporate veil and conclude that the HERO's flag is merely one of convenience.

Lauritzen itself recognized that courts are not bound by flags of convenience:

> "It is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which our law places upon them." 345 U.S. at 587, 97 L.Ed. at 1270.

Our course through the corporate veil also has strong support in post *Lauritzen* cases:

> "Although appellant contends otherwise, the practice in this type of case of looking through the facade of foreign registration and incorporation to the American ownership behind it is now well established. [cases cited]. This is essential unless the purposes of the Jones Act are to be frustrated by American shipowners intent upon evading their obligations under the law by the simple expedient of incorporating in a foreign country and registering their vessels under a foreign flag. See Lauritzen, 345 U.S. at page 587, 73 S.Ct. at page 930. In the case now before us appellant has taken the trouble to insert an additional nominal foreign corporation between the flag and the true beneficial ownership of the vessel. But we have little difficulty in brushing all this aside when considering the applicability *vel non* of the Jones Act. Complicating the mechanics of evasive schemes can-

not serve to make them more effective. What we now do is not to disregard the corporate entity to impose liability on the stockholders, but rather to consider a foreign corporation as if it were an American corporation pursuant to the liberal policies of a regulatory act. [cases cited]." *Bartholomew v. Universe Tankships, supra,* 263 F.2d at 442.

See also *Southern Cross Steamship Co. v. Firipis,* 4 Cir. 1960, 285 F.2d 651, *cert. denied,* 365 U.S. 869, 81 S.Ct. 903, 5 L.Ed.2d 859; *Pavlou v. Ocean Traders Marine Corp.,* S.D. N.Y. 1962, 211 F.Supp. 320; *Voyiatzis v. National Shipping & Trading Corp.,* S.D. N.Y. 1961, 199 F.Supp. 920; *Zielinski v. Empressa Hondurena de Vapores,* S.D. N.Y. 1953, 113 F.Supp. 93.

Most of the flag of convenience cases have involved ships whose owners were American citizens, not aliens domiciled in the United States as here. This distinction should make no difference because aliens residing in this country are, with rare exception, subject to the same commercial and tort laws as United States citizens. In *Leonhard v. Eley,* 10 Cir. 1945, 151 F.2d 409, 410, wherein a resident alien was held to be subject to our Selective Service laws, we read of the obligations owed by aliens residing on our shores:

"Aliens residing in the United States, so long as they are permitted by the government to remain therein, are entitled generally, with respect to the rights of person and property and to their civil and criminal responsibility, to the safeguards of the Constitution and to the protection of our laws. However, they may exercise only such political rights as are conferred upon them by law. Their duties and obligations, so long as they reside in the United States, do not differ materially from those of native-born or naturalized citizens. Equally with such citizens, for the rights and

> privileges they enjoy, they owe allegiance to our country, obedience to our laws, except those immediately relating to citizenship, contribution to the support of our governments, state and national; and in war, they share equally with our citizens the calamities which befall our country; and their services may be required for its defense and their lives may be periled for maintaining its rights and vindicating its honor."

The financial responsibility for compensating injured seamen is much less onerous than the personal sacrifice an alien makes when he serves in our military. This being true, it follows that a corporation owned by resident aliens should be subject to the Jones Act just as much as a corporation owned by United States citizens. Hellenic Lines and Universal Cargo Carriers are commercially domiciled in this country and therefore owe fealty to our laws.

The American character of this tort is further emphasized by the fact that Zacharias' injury occurred in the Port of New Orleans. This alone would not be sufficient to invoke the Jones Act. *Romero v. International Terminal Operating Co.*, 1959 358 U.S. 354, 381-84, 79 S.Ct. 468, 3 L.Ed.2d 368, 387-89. It is however, a countervailing factor which weakens our bondage to the flag. When combined with the totality of American contacts, the fact that the accident occurred in our territorial waters points to Jones Act applicability. In *Southern Cross Steamship Co.* v. *Firipis, supra,* 285 F.2d at 655, we read:

> "[T]he effective control of the vessel was by American interests. This, coupled with the fact that the injury occurred while the ship was in drydock in an American port and with the ship's Hondurian registration being illusory, is sufficient under the doctrine of Lauritzen v. Larsen, supra, for the application of the Jones Act."

We recognize that the Second Circuit has reached a contrary result on identical facts (the defendants there were, as here, corporations dominated by Pericles and the plaintiff was a Greek seaman injured in a United States port). *Tsakonites v. Transpacific Carriers Corp.*, 2 Cir. 1966, 368 F.2d 426, *cert. denied*, 386 U.S. 1007, 87 S.Ct. 1348, 18 L.Ed.2d 434. The appellee attempts to distinguish *Tsakonites* on the tenuous ground that at the time of Tsakonites' accident Pericles had not met the residence requirements for United States citizenship, whereas in our case Pericles had fulfilled that eligibility requirement at the time of Zacharias' injury. Casting such finite distinctions aside, we find that we cannot accept the reasoning and conclusion of the *Tsakonites'* majority. Instead we find our haven in the persuasive logic of Judge Waterman's dissent from which we shall quote *in extenso*:

> "United States courts have pierced through the facade of foreign registration and foreign incorporation and have applied United States law, including 46 U.S.C. §688 application, when American-based shipowners who are United States citizens have sought the protection from seamen's suits of less onerous laws of foreign states and have registered their vessels elsewhere than here [cases cited]. I would hold that here, in this case, where the injury occurred at dockside in the United States, United States law should be applied when the defendant shipowner, though an alien, has continued to register his vessels abroad while he currently enjoys the considerable benefits of permanent resident alien status here, a status deliberately sought by him. I cannot follow the argument that, in this respect, the application of United States law to this event that occurred in our territorial waters should depend upon whether the vessel upon which the event occurred is owned by a United States citizen or is owned by a United States

resident alien. We accord a lawful permanent resident alien the same constitutional protections we accord a citizen of the United States. See Kwong Hai Chew v. Colding, 344 U.S. 590, 596, 73 S.Ct. 472, 97 L.Ed. 576 (1953). Moreover, the duties and obligations of a resident alien have not been thought to 'differ materially from those of native-born or naturalized citizens.' Leonhard v. Eley, 151 F.2d 409, 410 (10 Cir. 1945). To be sure, a resident alien in some respects does not have legal parity with a United States citizen; for example, the Constitution requires that only citizens may be candidates for election to the House of Representatives and to the Senate; and an alien may be sued in any U. S. judicial district. Nevertheless, established authority, see, e.g., Leonhard v. Eley, supra, suggest that any United States law, such as the Jones Act, that imposes duties and obligations upon persons, should be evenly applied to United States citizens and resident aliens.

"So, unless the same obligations that United States law imposes on shipowners who are United States citizens are imposed on resident alien shipowners, a resident alien shipowner like Callimanopoulos will be able to enjoy the considerable benefits of lawful permanent resident alien status in this country without being subject to the duties and obligations exacted of an otherwise similarly situated competitive shipowner who is an American shipowner. The statement of this last proposition would seem to be enough to require a reversal instead of an affirmance of the order below. Moreover, under these circumstances, I do not regard as significant the fact that when this Greek seaman signed on he agreed to limit his rights to those arising under Greek law. Surely we would not consider such to be decisive, or even important, if the shipowner behind the Greek-incorporated corporation was a United

States citizen inasmuch as the accident occurred while the vessel was berthed at a New York harbor pier.

"I repeat: Shipowners who are resident aliens and shipowners who are United States citizens should be subject to the same liabilities for injuries suffered by their employees on their vessels when the vessels are at United States piers. If a United States shipowner is liable under the Jones Act to a foreign seaman serving on a foreign-registered vessel injured in our territorial waters, a permanently resident alien should also be so liable." 368 F.2d at 429-30.

We hold that the district court correctly found that it had jurisdiction to apply the Jones Act. The power of the flag is not limitless, and its cloth should not be stretched beyond realistic and reasonable lengths. Maritime allegiance is not to be defined in a patriotic, nationalistic, or chauvinistic sense, but in terms of economic ties. The HERO and its owners were not strangers wandering to our shores. Not only did most of the HERO's nautical peregrinations call for United States docking, but its ownership also rested here. The alienage of Pericles and his corporate entourage is clearly much less factual than fictional. We respect the inviolability of Pericles' choice of sovereignty, but not his choice of law.

AFFIRMED.

APPENDIX B.

In the
United States Court of Appeals
For the Fifth Circuit

No. 25699

Hellenic Lines Limited and
Universal Cargo Carriers, Inc.,
Appellants,

versus

Zacharias Rhoditis,
Appellee.

Appeal from the United States District Court for the Southern District of Alabama

On Petition for Rehearing and Petition for Rehearing En Banc

(July 3, 1969)

Before Goldberg and Ainsworth, Circuit Judges, and Spears, District Judge.

Per Curiam: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

APPENDIX C.

United States Court of Appeals
For the Second Circuit.

No. 288—September Term, 1965.

(Argued March 23, 1966 Decided November 16, 1966.)

Docket No. 29734.

Elias Tsakonites, Plaintiff-Appellant,

v.

Transpacific Carriers Corp. and Hellenic Lines, Ltd.,
Defendants-Appellees.

Before:

Lombard, Chief Judge,
Waterman and Moore, Circuit Judges.

Appeal by a Greek seaman injured on board a Greek vessel in the United States from a dismissal of his claim under the Jones Act, 46 U. S. C. §688, by the United States District Court for the Southern District of New York, Irving Ben Cooper, Judge.

Herbert Lebovici, New York, N. Y. (Harold D. Safir, Lebovici and Safir, New York, N. Y., on the brief), for plaintiff-appellant.

Edwin K. Reid, New York, N. Y. (George D. Byrnes, Zock, Petrie, Sheneman & Reid, New York, N. Y., on the brief), for defendants-appellees.

James M. Estabrook, David P. H. Watson, Haight, Gardner, Poor & Havens, New York, N. Y., for Kingdom of

Greece, the Union of Greek Shipowners and the Chamber of Shipping of Greece, as amici curiae.

Moore, Circuit Judge:

Plaintiff, a Greek seaman, brought suit in the Southern District of New York, relying entirely upon the Jones Act and the general maritime law of the United States. The District Court dismissed the case on the merits on the grounds that plaintiff had failed to establish the applicability of American law. From this judgment plaintiff appeals.

The sole question presented on this appeal is whether the Jones Act, 46 U. S. C. §688, and the general maritime law of the United States apply to an accident in an American port to a foreign seaman on a ship owned by a foreign corporation and flying a foreign flag, where the principal shareholder of the foreign corporation, though a foreign citizen, resides in America, and where the operations of the ship on which the injury occurred were controlled from this country.

Elias Tsakonites, a Greek citizen and domiciliary, the plaintiff-appellant, signed on as a member of the crew of the *SS Hellenic Spirit* under an agreement dated Piraeus, Greece, June 4, 1959, which provided that any claim arising from his employment was to be tried exclusively by the Greek law courts. Plaintiff boarded the *Hellenic Spirit* on June 5, 1959, at Herakleion, Crete. The ship was then on the outward leg of a voyage from Houston, Texas, to Rangoon, Burma, with numerous stops in between. After reaching Burma, the ship sailed back through the Red Sea and the Mediterranean, stopping at New York and Philadelphia before finishing its inward voyage in Cuba. The accident which gave rise to the present suit occurred while the *Hellenic Spirit* was berthed at a pier in Brooklyn. On September 26, 1959, while descending a ladder from the main deck to the interior of a hold, plaintiff fell to the

deck below. He was taken to the Lutheran Medical Center in Brooklyn, where he remained until January 20, 1960.

The *Hellenic Spirit* at all times relevant to this suit sailed under the Greek flag and was registered under the laws of Greece. Her crew and officers were almost entirely Greek. She was owned by the defendant Transpacific Carriers Corp., a Panamanian corporation wholly owned by the defendant Hellenic Lines, Ltd., a Greek corporation, over 96% of the shares of which were owned by Pericles G. Callimanopoulos, a Greek citizen, who first came to this country in 1945. From 1945 to 1956 or 1957, he spent part of his time here, first as a visitor, then as a treaty trader. In 1956 or 1957, he was admitted to the United States as a permanent resident.

With the exception of Callimanopoulos and his son, all of the officers and directors of Hellenic Lines reside in Greece as well as being Greek citizens. However, the directors from time to time vested in Callimanopoulos a broad power of attorney to run the company as General Manager.

Hellenic Lines maintains an office in Piraeus and a slightly smaller office in New York City, in addition to smaller offices in this country and abroad. In August 1959, the New York office employed 63 people at a payroll cost of approximately $28,000 per month. The company's annual statement was prepared in New York. Hellenic Lines maintains bank accounts in New York banks and has borrowed extensively from New York banks.

Hellenic Lines at the time of the accident operated from New York 22 or 23 vessels engaged in three liner services: to the Mediterranean; to the Persian Gulf; and to the Red Sea and India and Burma. The company's agents at ports of call reported to the New York office on all matters concerning these three liner services. The *Hellenic Spirit* was engaged in the Red Sea liner service.

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The starting point of any discussion of the applicability of American law to seaman's accidents must be *Lauritzen v. Larsen*, 345 U. S. 571 (1953), in which the Supreme Court listed and appraised seven factors which should be considered in balancing the need for fairness to a plaintiff and the legitimate interest of the United States against the policies underlying international comity. Those seven factors are: the place of the wrongful act—a factor to which the Supreme Court attributed little weight, because of the disruptive effects adherence to such a standard would have upon the uniform regulation of shipboard activities;[1] the law of the flag, which factor, the Supreme Court said, must prevail in the absence of some "heavy counterweight", and which generally accords with principles of comity; the allegiance or domicile of the injured party; the allegiance of the defendant shipowner; the place and terms of the contract; the relative inaccessibility of the foreign forum, a factor which the Court found relevant not on the issue of which law is applicable but rather on whether the court after finding its own law inapplicable should apply the law of some other jurisdiction; and finally the law of the forum, to which the Court attributed very little weight.

Lauritzen did not attempt to indicate whether or not American law should apply under all combinations of listed factors not before the Court. Cases both before and after *Lauritzen*, however, have established that certain com-

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[1] See *Romero v. International Term. Co.*, 358 U. S. 354, 384 (1959):

> "To impose on ships the duty of shifting from one standard of compensation to another as the vessel passes the boundaries of territorial waters would be not only an onerous but also an unduly speculative burden, disruptive of international commerce and without basis in the expressed policies of this country. The amount and type of recovery which a foreign seaman may receive from his foreign employer while sailing on a foreign ship should not depend on the wholly fortuitous circumstance of the place of injury."

binations of factors either are or are not enough to justify application of American law. See Note, Admiralty Choice of Law: *Lauritzen v. Larsen* Applied, 47 Va. L. Rev. 1400 (1961).

The present case presents a combination of factors the significance of which is not conclusively established by existing cases. Defendants contend, and the trial court held, that the record reveals no factors "establishing a connection with the United States . . . sufficient to outweigh the 'venerable and universal rule'" which gives cardinal importance to the law of the flag, *Tjonaman v. A/S Glittre*, 340 F. 2d 290, 292 (2d Cir.), *cert. denied*, 381 U. S. 925 (1965). Plaintiff is an alien, who is not even an American resident. His employment contract by its terms limits his rights to those arising under Greek law—a factor to which weight must be given because it represents plaintiff's jurisdictional choic Nor can, in this case, the Greek flag of the *Hellenic Spirit* be said to be a "flag of convenience," within the meaning of cases like *Bartholomew v. Universe Tankships, Inc.*, 263 F. 2d 437, 440 (2d Cir.), *cert. denied*, 359 U. S. 1000 (1959), and *Southern Cross SS Co. v. Firipis*, 285 F. 2d 651 (4th Cir. 1960), *cert. denied*, 365 U. S. 869 (1961). The *Hellenic Spirit* had contacts with Greece apart from being registered there and flying its flag. It stopped there to pick up crews, and not infrequently to discharge cargo. The officers and directors of the company which owned the ship were Greek, as were all of the shareholders of the parent company Hellenic Lines. Greece certainly has enough contacts with the ship so that our courts should hesitate out of considerations of comity before applying and foisting upon it the heavy potential liabilities of the American law of maritime personal injuries. Cf. *McCulloch v. Sociedad Nacional de Marineros de Brazil*, 372 U. S. 10 (1963) (National Labor Relations Act does not apply to maritime operations of ships owned by foreign

subsidiaries of American corporations, crewed by alien seamen).

In favor of jurisdiction are the facts that plaintiff was injured here and spent almost four months in an American hospital; that the headquarters of the ship's activities were located here; and that the general manager and 96% shareholder, although a Greek citizen, is a permanent resident here. The few courts which have previously passed upon the problem have attached considerable significance to the base of business operations, see *Southern Cross SS Co., supra,* and *Pavlou v. Ocean Traders Marine Corp.*, 211 F. Supp. 320, 322 (S. D. N. Y. 1962) (provision in contract between Greek seaman and Liberian corporation owned by Greeks, Canadians and Americans, stating that Greek law governs), as well as to the residence of the ultimate owners, *id.* But cf. *Cruz v. Harkna*, Admiralty No. 176-315, S. D. N. Y., Feb. 24, 1954 (Honduran law applies despite fact that some of the ship's owners, all of whom were Estonian refugees, resided in America).

Wherever, as here, there are various factors to be weighed for and against jurisdiction, the decision must be controlled by the more weighty. This court in its recent *Tjonaman* decision, *supra,* faced a similar problem and resolved it against jurisdiction in our courts. The Supreme Court has given no indication that the law of the flag (when not a flag of convenience) is still not to be considered of paramount importance. Also not to be ignored, is the fact that this Greek seaman whose residence is in Greece, who is or is not presumed to be familiar with the rights and privileges under Greek law of those who serve in the crew on Greek ships, signed articles in which he agreed to be subject to those laws. He doubtless did not have the slightest knowledge of the provisions of American statutes enacted for the benefit of American

seamen by our Congress for their protection. It is not unfair to have him abide by his agreement. As said by the Greek government in its *amicus* brief with respect to these agreements: "These collective bargaining agreements contemplate the hiring of Greek seamen under Greek law aboard Greek flag vessels, and contemplate the payment to these seamen in the event they are injured, of benefits under Greek law and in accordance with the Greek social welfare programs." International comity requires respect for such agreements.

Although plaintiff argued here that his right to a jury trial was violated by the district judge deciding the case on the basis of stipulated facts, we think it was clear that he agreed to have the issue of the application of United States law decided on the stipulations.

Dismissal affirmed.

Waterman, *Circuit Judge* (dissenting):

I respectfully dissent.

To me the present case presents a combination of factors that justifies the application of United States law rather than the municipal law of another nation. To be sure, the suit has been brought by a Greek alien seaman injured while serving aboard a vessel of foreign registry and ownership. But the accident occurred in the territorial waters of the United States while the S.S. Hellenic Spirit was berthed at the 57th Street pier, Brooklyn, New York. Furthermore, Hellenic Lines, Ltd., the foreign shipowner, has a substantial executive office in the United States, from which extensive ship operations are conducted. And, in my view, it is of the greatest importance that Callimanopoulos, the general manager of Hellenic Lines and the owner of more than 95% of Hellenic Lines stock, has regularly re-

sided in the United States since 1945 and has enjoyed the status of a permanent resident alien here since 1956 or 1957.

United States courts have pierced through the facade of foreign registration and foreign incorporation and have applied United States law, including 46 U. S. C. §688 application, when American-based shipowners who are United States citizens have sought the protection from seaman's suits of less onerous laws of foreign states and have registered their vessels elsewhere than here. E.g., *Bartholomew v. Universe Tankships, Inc.*, 263 F. 2d 437 and cases cited at 442 (2 Cir.), *cert. denied*, 359 U. S. 1000 (1959). I would hold that here, in this case, where the injury occurred at dockside in the United States, United States law should be applied when the defendant shipowner, though an alien, has continued to register his vessels abroad while he currently enjoys the considerable benefits of permanent resident alien status here, a status deliberately sought by him.[1] I cannot follow the argument that, in this respect, the application of United States law to this event that occurred in our territorial waters should depend upon whether the vessel upon which the event occurred is owned by a United States citizen or is owned by a United States resident alien. We accord a lawful permanent resident alien the same constitutional protections we accord a citizen of the United States. See *Kwong Hai Chew v. Golding*, 344 U. S. 590, 596 (1953). Moreover, the duties and obligations of a resident alien have not been thought to "differ materially from those of native-born or naturalized citizens." *Leonhard v. Eley*, 151 F. 2d 409, 410 (10 Cir. 1945).

[1] In the present case the fact that the defendant, Hellenic Lines, Ltd., is incorporated in Greece does not successfully disguise the fact that the corporation is almost solely owned by a single individual and that that individual is a resident alien in the United States. This case does not involve the applicability of our law to a corporation publicly owned by many individuals permanently residing in several different countries or even in one such country.

To be sure, a resident alien in some respects does not have legal parity with a United States citizen; for example, the Constitution requires that only citizens may be candidates for election to the House of Representatives and to the Senate; and an alien may be sued in any U. S. judicial district. Nevertheless, established authority, see e.g., *Leonhard v. Eley, supra,* suggests that any United States law, such as the Jones Act, that imposes duties and obligations upon persons, should be evenly applied to United States citizens and resident aliens.

So, unless the same obligations that United States law imposes on shipowners who are United States citizens are imposed on resident alien shipowners, a resident alien shipowner like Callimanopoulos will be able to enjoy the considerable benefits of lawful permanent resident alien status in this country without being subject to the duties and obligations exacted of an othewise similarly situated competitive shipowner who is an American shipowner. The statement of this last proposition would seem to be enough to require a reversal instead of an affirmance of the order below. Moreover, under these circumstances, I do not regard as significant the fact that when this Greek seaman signed on he agreed to limit his rights to those arising under Greek law. Surely we would not consider such to be decisive, or even important, if the shipowner behind the Greek-incorporated corporation was a United States citizen inasmuch as the accident occurred while the vessel was berthed at a New York harbor pier.

I repeat: Shipowners who are resident aliens and shipowners who are United States citizens should be subject to the same liabilities for injuries suffered by their employees on their vessels when the vesels are at United States piers. If a United States shipowner is liable under the Jones Act to a foreign seaman serving on a foreign-registered vessel injured in our territoral waters, a permanently resident alien should also be so liable.

I find no reported case denying a seaman his recovery in which the significant factors are enough similar to this case to require us to affirm the order below. In major part I agree with the exhaustive discussion of the authorities in the majority's opinion. Unlike the majority, however, I am not persuaded that here the ship had enough contacts with Greece so that we should hesitate "before applying and foisting upon [Callimanopoulos] the heavy potential liabilities of the American law of maritime personal injuries."

I would reverse the order below dismissing the action and remand for futher proceedings.

APPENDIX D.

United States Court of Appeals
For the Fifth Circuit.

October Term, 1968.

No. 25699.

D. C. Docket No. 3165—Admiralty.

Hellenic Lines Limited and Universal Cargo Carriers, Inc.,
Appellants,

versus

Zacharias Rhoditis,
Appellee.

Appeal from the United States District Court for the Southern District of Alabama.

Before Goldberg and Ainsworth, Circuit Judges, and Spears, District Judge.

Judgment.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that appellants pay to appellee, the costs on appeal to be taxed by the Clerk of this Court.

May 8, 1969

Issued as Mandate: July 11, 1969.